1 LYNN HUBBARD, III, SBN 69773 FILED SCOTTLYNN J HÚBBARD, IV, SBN 212970 2 LAW OFFICES OF LYNN HUBBARD 12 Williamsburg Lane NOV UB YUU/ 3 Chico, CA 95926 CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA Telephone: (530) 895-3252 4 Facsimile: (530) 894-8244 5 Attorneys for Plaintiff 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF CALIFORNIA 10 11 12 '07 GV 2141 H (NLS) A.J. OLIVER, 13 14 Plaintiff, Plaintiff's Complaint 15 vs. 16 DIJLA, INC. dba CIRCLE H LIQUOR; REMARK 17 CORPORATION, 18 Defendants. 19 20 21 22 23 24 25 26 27 28 Oliver v. Circle H Liquor Plaintiff's Complaint Page 1

Filed 11/08/2007

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I. SUMMARY

1. This is a civil rights action by plaintiff A.J. Oliver ("Oliver") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Circle H Liquor 600 Palm Avenue, Suite 113 Imperial Beach, CA 91932 (hereafter "the Store")

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2. Oliver seeks damages, injunctive and declaratory relief, attorneys' fees and costs, against Dijla, Inc. dba Circle H Liquor and Remark Corporation (collectively "Circle H Liquor") pursuant to the Americans with Disabilities Act of 1990, (42 U.S.C. §§ 12101 et seq.), and related California statutes.

II. JURISDICTION

- 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.
- 4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.
 - 5. Oliver's claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Southern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

- 7. Circle H Liquor owns, operates, or leases the Store, and consists of a person (or persons), firm, or corporation.
- 8. Oliver suffered a stroke approximately 13 years ago. The stroke left him paralyzed, speech impaired, and unable to stand or walk. He requires the Oliver v. Circle H. Liquor

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use of a motorized wheelchair when traveling about in public. Consequently, Oliver is "physically disabled," as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

V. FACTS

- 9. The Store is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.
- 10. Oliver visited the Store and encountered barriers (both physical and intangible) that interfered with—if not outright denied—his ability to use and enjoy the goods, services, privileges, and accommodations offered at the facility. To the extent known by Oliver, the barriers at the Circle H Liquor included, but are not limited to, the following:
 - The tow away signage posted is incorrect;
 - The tow away signage posted does not include a phone number;
 - There is no parking spaces designated as being accessible to the disabled;
 - There is no parking spaces designated as being "van accessible;"
 - There is a ramp encroaching into the access aisle provided;
 - The counters inside the store are too high; and,
 - There is no accessible route through the store as multiple aisles are too narrow.
- These barriers prevented Oliver from enjoying full and equal access.
- 11. Oliver was also deterred from visiting the Store because he knew that the Store's goods, services, facilities, privileges, advantages, and accommodations were unavailable to physically disabled patrons (such as himself). He continues to be deterred from visiting the Store because of the future threats of injury created by these barriers.
- 12. Oliver also encountered barriers at the Store, which violate state and federal law, but were unrelated to his disability. Nothing within this complaint,

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however, should be construed as an allegation that Oliver is seeking to remove barriers unrelated to his disability.

- Circle H Liquor knew that these elements and areas of the Store 13. were inaccessible, violate state and federal law, and interfere with (or deny) access to the physically disabled. Moreover, Circle H Liquor has the financial resources to remove these barriers from the Store (without much difficulty or expense), and make the facility accessible to the physically disabled. To date, however, Circle H Liquor refuses to either remove those barriers or seek an unreasonable hardship exemption to excuse non-compliance.
- At all relevant times, Circle H Liquor has possessed and enjoyed sufficient control and authority to modify the subject property to remove impediments to wheelchair access and to comply with the Americans with Disabilities Act Accessibility Guidelines and Title 24 regulations. Circle H Liquor has not removed such impediments and have not modified the subject property to conform to accessibility standards. Circle H Liquor has intentionally maintained the subject property in its current condition and has intentionally refrained from altering the subject property so that it complies with the accessibility standards.
- Oliver further alleges that the (continued) presence of barriers at the 15. facility is so obvious as to establish Circle H Liquor's discriminatory intent. On information and belief, Oliver avers that evidence of this discriminatory intent includes Circle H Liquor's refusal to adhere to relevant building standards; disregard for the building plans and permits issued for the facility; conscientious decision to the architectural layout (as it currently exists) at the facility; decision not to remove barriers from the facility; and allowance that Circle H Liquor's property continues to exist in its non-compliant state. Oliver further alleges, on

E.g., Gunther v.Lin, 144 Cal.App.4th 223, fn. 6 Oliver v. Circle H Liquor

interruptions in access due to maintenance or repairs.²

Id.; 28 C.F.R. § 36.211(b)

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VI. FIRST CLAIM

information and belief, that Circle H Liquor is not in the midst of a remodel, and

that the barriers present at the facility are not isolated (or temporary)

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

- 16. Oliver incorporates the allegations contained in paragraphs 1 through 15 for this claim.
- 17. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).
- 18. Circle H Liquor discriminated against Oliver by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Store during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

- 19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." <u>Id.</u> § 12181(9).
- 20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

- 21. Here, Oliver alleges that Circle H Liquor can easily remove the architectural barriers at the Store without much difficulty or expense, and that Circle H Liquor violated the ADA by failing to remove those barriers, when it was readily achievable to do so.
- 22. In the alternative, if it was not "readily achievable" for Circle H Liquor to remove the Store's barriers, then Circle H Liquor violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

- 23. On information and belief, the Store was designed or constructed (or both) after January 26, 1992—independently triggering access requirements under Title III of the ADA.
- 24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren't readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).
- 25. Here, Circle H Liquor violated the ADA by designing or constructing (or both) the Store in a manner that was not readily accessible to the physically disabled public—including Oliver—when it was structurally practical to do so.³

Failure to Make an Altered Facility Accessible

- 26. On information and belief, the Store was modified after January 26, 1992, independently triggering access requirements under the ADA.
- 27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering

Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

Plaintiff's Complaint

an area that contains a facility's primary function also requires adding making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. <u>Id.</u>

28. Here, Circle H Liquor altered the Store in a manner that violated the ADA and was not readily accessible to the physically disabled public—including Oliver—to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

- 29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 30. Here, Circle H Liquor violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Store, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.
- 31. Oliver seeks all relief available under the ADA (*i.e.*, injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.
- 32. Oliver also seeks a finding from this Court (*i.e.*, declaratory relief) that Circle H Liquor violated the ADA in order to pursue damages under California's Unruh Civil Rights Act or Disabled Persons Act.

VII. SECOND CLAIM

Disabled Persons Act

- 33. Oliver incorporates the allegations contained in paragraphs 1 through 30 for this claim.
- 34. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of Oliver v. Circle H Liquor

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the streets, sidewalks, walkways, public buildings and facilities, and other public places.

- 35. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.
- 36. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).
- 37. Here, Circle H Liquor discriminated against the physically disabled public—including Oliver—by denying them full and equal access to the Store. Circle H Liquor also violated Oliver's rights under the ADA, and, therefore, infringed upon or violated (or both) Oliver's rights under the Disabled Persons Act.
- 38. For each offense of the Disabled Persons Act, Oliver seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.
- 39. He also seeks to enjoin Circle H Liquor from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

VIII. THIRD CLAIM

Unruh Civil Rights Act

- 40. Oliver incorporates the allegations contained in paragraphs 1 through 30 for this claim.
- California Civil Code § 51 states, in part, that: All persons within 41. the jurisdiction of this state are entitled to the full and equal accommodations,

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advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

- 42. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.
- 43. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.
- 44. Circle H Liquor's aforementioned acts and omissions denied the physically disabled public—including Oliver—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).
- 45. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Oliver by violating the Unruh Act.
- 46. Oliver was damaged by Circle H Liquor's wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.
- 47. Oliver also seeks to enjoin Circle H Liquor from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

IX. FOURTH CLAIM

Denial of Full and Equal Access to Public Facilities

- 48. Oliver incorporates the allegations contained in paragraphs 1 through 13 for this claim.
- 49. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

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- 50. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.
- 51. Oliver alleges the Store is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Store was not exempt under Health and Safety Code § 19956.
- 52. Circle H Liquor' non-compliance with these requirements at the Store aggrieved (or potentially aggrieved) Oliver and other persons with physical disabilities. Accordingly, he seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

X. PRAYER FOR RELIEF

WHEREFORE, Oliver prays judgment against Circle H Liquor for:

- 1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
- 2. Declaratory relief that Circle H Liquor violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
- 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
- 4. Attorneys' fees, litigation expenses, and costs of suit.⁴
- 5. Interest at the legal rate from the date of the filing of this action.

DATED: October 25, 2007

LAW OFFICES OF LYNN HUBBARD

LYNN HUBBARD, III Attorney for Plaintiff

This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

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JS 44 (Rev. 12/96)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS				DEFENDANTS		IIED
A. J. OLIVER				DIJLA, INC. dba	CIRCLE H LIQUOR	
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego (EXCEPT IN U.S. PLAINTIFF CASES)				1 .3 a	DEMNATION BY SES USE TH	I.S. DISTRICT COURT ISTRICT OF CALIFORNIA HE LOCATION OF THEEPUTE
(C) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)				ATTORNEYS (IF KNOWN)	,	
Lynn Hubbard, III, Esquire LAW OFFICES OF LYNN HUBBARD 12 Williamsburg Lane, Chico, CA 95926				'07 C\	2141	H (NLS)
II. BASIS OF JURISDIC	CTION (PLACE AN "X"	IN ONE BOX ONLY)		72	RINCIPAL PARTIES	(PLACE AN "X" IN ONE BOX FOR
1 U.S. Government Plaintiff 2 U.S Government Defendant	▼3 Federal Question (U.S. Government ■ Diversity (Indicate Citizens)		c	Citizen of This State	of Business I Incorporated a of Business I	nd Principal Place ☐ 5 ☐ 5 n Another State
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VI. ORIGIN ✓ 1 Original Proceeding □ 2 Rer State V. NATURE OF SUIT	noved from 3 Rema te Court Appell	ate Court	Reinstat Reopen	Transfe ted or 6 anothe	erred from r district	
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110 Insurance 120 Marine 130 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholder's Sulls 190 Other Contract 195 Contract Product Liability REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property VI. CAUSE OF ACTIO 42 U.S.C. Section Congoing violation 200 Progening violation 200 Pro	DO NOT CITE JURISDIC	TIONAL UNLESS DIVER	y- ity sonal Liability tty ng al al al age lege ity TONS coate	G10 Agriculture G20 Other Food & Drug G25 Drug Related Seizure of Property 21 G30 Liquor Laws G60 Airline Regs. G60 Occupational Safety/Health G90 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Report- ing & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act FILING AND WRITE BRIEF ST.	864 SSID Title XV 865 RSI (405(g))	400
VII. REQUESTED IN COMPLAINT:	CHECK IF THIS I	S A CLASS ACT		DEMAND \$ Excess \$75,00		S only if demanded in complaint: AND: ☐ YES ✓ NO
VIII. RELATED CASE	(S) (See instructions):	IUDGE			DOCKET NUMBER	
DATE November 7	, 2007	SIGNATURED	EATTOR	RNE OF RECORD		
FOR OFFICE USE ONLY	11.0000		-	Y		
RECEIPT # 144315	AMOUNT \$350 (18/07 BY APPLYING IFP		JUDGE	MAG	. JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA SAN DIEGO DIVISION

144315 - BH

November 08, 2007 11:55:50

Civ Fil Non-Pris

USAO #.: 07CV2141 CIVIL FILING

Judge..: MARILYN L HUFF

Amount.:

\$350.00 CK

Check#.: BC# 20506

Total-> \$350.00

FROM: OLIVER C. DIJLA INC. CIVIL FILING